

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF COLUMBUS, OHIO, BEREA COLLEGE, and THE AMERICAN MISSIONARY ASSOCIATION,

Petitioners,

vs.

ORA DAVIS, ET AL,

Respondents.

No. 915

PETITION FOR REHEARING

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully ask a rehearing of their petition for a writ of certiorari to the Supreme Court of Ohio, denied on the 23rd day of April, 1923, for the following reasons:

1. On May 7, 1923, this Honorable Court granted the petition for writ of certiorari to the

United States Circuit Court of Appeals for the Second Circuit in the case of William H. Edwards, formerly Collector of Internal Revenue for the Second District of New York, Petitioner, vs. Joseph Jermain Slocum, et al, as Executors of the last will and testament of Margaret Olivia Sage, deceased, Respondents, No. 974, October Term, 1922.

The fundamental question in that case is the same as in this, namely, the proper method of ascertaining and assessing the estate tax under the Revenue Act of 1918 (Act, Feb. 24, 1919, 40 Stat. 1096; c. 18, Section 400, et seq.) in cases where there are residuary bequests to religious, charitable, scientific, literary or educational corporations. The same question arises also where such bequests are made for public purposes. (Sec. 403 (a) (3).)

It is stated in the brief of the Solicitor General in support of the petition in case No. 974, page 7,

“* * * the particular question in the case at bar is to determine the ‘amount of’ the residuary gifts to charity.”

That is also the question in the Ohio case, and is and will be the question in all cases where under a will there is a residuary devise to exempt institutions.

This question requires the construction of the Revenue Act of 1918 in two vital matters:

(a) How, in such cases, is the *net* estate to be determined;

(b) Does Sec. 403 (3) of that Act exempt a charitable bequest from the estate tax by excluding it in calculating the *net* estate upon the transfer of which the tax is levied; if so, does the fact that such a bequest happens to constitute a part or all of the residuary estate divest it of the privilege granted by the statute?

2. In case No. 974 the immediate question is whether, in determining the net estate, the exempted residuary estate is to be deducted before the calculation of the tax, or whether the net estate is to be determined by deducting the residuary estate as reduced by the tax. This question is in fact incidental to the real question above stated; namely, whether or not, in view of the exemption provided by Sec. 403 (3) a charitable bequest is subject to the estate tax at all. If the Government is not correct in its contention in case No. 974 that the tax comes out before the residuary estate is determined, it is because the residuary estate is *exempt* from the tax, and if it is exempt the State courts can not shift to it the burden from which it is released by Congress.

3. The question, as stated by the Solicitor General, is of the utmost importance and of great general interest, as its solution will establish the rule applicable to the settlement of all estates where

there are bequests to exempt institutions, or for public purposes.

If Sec. 403 (3) grants an exemption from this tax to charitable institutions, then such exemption must be respected by the State courts although the distribution of estates is a State matter. The tax is not a state tax, and the State has no power either to shift or lessen its burden, no power with reference to it at all. To deny the exemption, if it in fact exists, is to deny a privilege and immunity conferred by a federal statute. *American Express Company vs. Maynard*, 177 U. S. 404.

Respectfully submitted,

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FRANK DAVIS, JR.,
Attorneys for Petitioners.

CERTIFICATE

I hereby certify that I have carefully read the foregoing petition for rehearing; that I believe it to be meritorious, and that I know it is not filed for the purpose of delay.

FRANK DAVIS, JR.

May 14, 1923,

Washington, D. C.